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7

8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 950-2022-003597

13 **ERIC THOMAS FERGEN, P.A.**
14 **24 W Camelback Rd # A-711**
Phoenix, AZ 85013-2529

ACCUSATION

15 **Physician Assistant License No. PA 57093,**

16 Respondent.

17
18 **PARTIES**

19 1. Rozana Khan (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the Physician Assistant Board, Department of Consumer Affairs.

21 2. On or about August 16, 2019, the Physician Assistant Board issued Physician
22 Assistant License Number PA 57093 to ERIC THOMAS FERGEN, P.A. (Respondent). The
23 Physician Assistant License was in full force and effect at all times relevant to the charges
24 brought herein and will expire on June 30, 2023, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Physician Assistant Board (Board), Department
27 of Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

4. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

5. Section 141 of the Code states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

COST RECOVERY

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

7. Respondent is subject to disciplinary action under Code section 2305 in that Arizona Regulatory Board of Physician Assistants took disciplinary action against Respondent's license in Arizona. The circumstances are as follows:

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1 8. On February 24, 2022, the Arizona Regulatory Board of Physician Assistants
2 (Arizona Board) issued an Order for Letter of Reprimand and Probation (Order) regarding
3 Respondent's license to be a practicing physician assistant in Arizona. The Arizona Board
4 initiated the investigation into Respondent after receiving a complaint that Respondent was
5 terminated from employment at an urgent care and that he may have a health condition that
6 impairs Respondent's ability to safely perform health care tasks. During the investigation,
7 Arizona Board staff reviewed employment records from the Hospital where Respondent held
8 privileges and identified a number of performance related complaints concerning job impairment
9 beginning in October 2020. On or about January 11, 2021, Respondent was notified by the
10 Hospital to immediately cease practice pending termination of his employment on April 11, 2021.
11 Further, Respondent was referred to an assessment with the Board's Physician Health Program
12 (PHP) Assessor. The Assessor opined that Respondent was safe to perform health care tasks if
13 Respondent entered into the PHP for five years, and complied with monitoring requirements and
14 received ongoing therapeutic treatment. On or about July 30, 2021, Respondent entered into an
15 Interim Order to participate in the Physician Health Program and Consent to the Same.

16 9. Under the terms of the Order, Respondent's Arizona license was placed on probation
17 for five years' and is subject to participation in the Arizona's PHP. Respondent is to comply with
18 the following terms and conditions: Respondent shall not consume alcohol, any food, or other
19 substance containing poppy seeds or alcohol, Respondent shall not take any illegal drugs or mood
20 altering medication unless prescribed for legitimate purposes. Respondent shall enter treatment
21 with an approved psychiatrist, comply with all treatment recommendations, and instruct the
22 treating psychiatrist to submit quarterly written reports to PHP. Additionally, Respondent is to
23 submit to random biological fluid testing.

24 10. Respondent's conduct and the action of the State of Arizona Regulatory Board of
25 Physician Assistants, as set forth in paragraph 8, above, constitute unprofessional conduct within
26 the meaning of section 2305 and conduct subject to discipline within the meaning of section
27 141(a).

28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Board issue a decision:

1. Revoking or suspending Physician Assistant License Number PA 57093, issued to Respondent Eric Thomas Fergen, P.A.;
2. Ordering Respondent Eric Thomas Fergen, P.A. to pay the Physician Assistant Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Ordering Respondent Eric Thomas Fergen, P.A., if placed on probation, to pay the Physician Assistant Board the costs of probation monitoring and any delinquent costs of probation;
4. Taking such other and further action as deemed necessary and proper.

DATED: November 3, 2022



ROZANA KHAN
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Order

Arizona Regulatory Board of Physician Assistants

Case No. PA-21-0049A

1 **BEFORE THE ARIZONA REGULATORY BOARD**
2 **OF PHYSICIAN ASSISTANTS**

3 In the Matter of

Case No. PA-21-0049A

4 **ERIC T. FERGEN, PA-C**

**ORDER FOR LETTER OF
REPRIMAND AND PROBATION;
AND CONSENT TO THE SAME**

5 Holder of License No. **7075**
6 For the Performance of Healthcare Tasks
 In the State of Arizona.

7 Eric T. Fergen, PA-C ("Respondent") elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for Letter of Reprimand and Probation and
9 Consent to the Same; admits the jurisdiction of the Arizona Regulatory Board of
10 Physician Assistants ("Board"); and consents to the entry of this Order by the Board.

11 **FINDINGS OF FACT**

- 12 1. The Board is the duly constituted authority for the regulation and control of
13 physician assistants in the State of Arizona.
- 14 2. Respondent is the holder of License No. 7075 for the performance of health
15 care tasks in the State of Arizona.
- 16 3. The Board initiated case number PA-21-0049A upon receipt of a complaint
17 alleging that Respondent had recently been terminated from employment at an urgent
18 care and that he may have a health condition that impairs his ability to safely perform
19 health care tasks.
- 20 4. Respondent was referred for an assessment with the Board's Physician
21 Health Program ("PHP") Assessor who opined that Respondent was safe to perform
22 health care tasks provided he enter into the PHP for five years, and comply with
23 monitoring requirements and recommendations for ongoing therapeutic treatment.
- 24 5. On July 30, 2021, Respondent entered into an Interim Order to participate in
25 the Physician Health Program and Consent to Same ("Interim Consent Agreement").

6. Respondent failed to notify the Board regarding his changes to mailing and practice address, resulting in a delay in providing initial notification to Respondent regarding this case.

7. During the course of the Board's investigation, Board staff reviewed employment records from the Hospital where Respondent held privileges, and identified a number of performance related complaints, resulting in concerns regarding on the job impairment beginning in October, 2020. Respondent was notified by the Hospital on January 11, 2021 to immediately cease practice pending termination of his employment contract on April 11, 2021.

8. Additionally, Board staff determined that Respondent failed to accurately respond to the confidential health questions on his initial application for licensure.

CONCLUSIONS OF LAW

1. The Arizona Regulatory Board of Physician Assistants possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-2501(18)(a). Specifically, Respondent's conduct violated A.R.S. § 32-2527(A) ("A person holding an active license as a physician assistant in this state shall inform the board in writing within thirty days of that person's current residence address, office address and telephone number and of each change in residence and office address or telephone number that occurs. A residential address is not available to the public unless it is the only address of record.").

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-2501(18)(d) ("Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health

1 care tasks or to the extent that judgment may be impaired and the ability to perform
2 health care tasks detrimentally affected.”).

3 4. The conduct and circumstances described above constitutes unprofessional
4 conduct pursuant to A.R.S. § 32-2501(18)(j) (“(j) Committing any conduct or practice that
5 is or might be harmful or dangerous to the health of a patient or the public.”).

6 4. The conduct and circumstances described above constitutes unprofessional
7 conduct pursuant to A.R.S. § 32-2501(18)(n) (“Procuring or attempting to procure a
8 physician assistant license by fraud, misrepresentation or knowingly taking advantage of
9 the mistake of another.”).

10 5. The conduct and circumstances described above constitutes unprofessional
11 conduct pursuant to A.R.S. § 32-2501(18)(cc) (“Knowingly making a false or misleading
12 statement on a form required by the board or in written correspondence or attachments
13 furnished to the board.”).

14 **ORDER**

15 **IT IS HEREBY ORDERED THAT:**

16 1. Respondent is issued a Letter of Reprimand.

17 2. Respondent’s license is placed on Probation for **Five Years**¹ and is subject
18 to participation in the Board’s PHP and compliance with the following terms and
19 conditions:

20 3. Respondent shall not consume alcohol or any food or other substance
21 containing poppy seeds or alcohol.

22 4. Respondent shall not take any illegal drugs or mood altering medications
23 unless prescribed for a legitimate therapeutic purpose.

24 _____
25 ¹ Respondent’s participation shall be retroactive to July 30, 2021.

1 5. Respondent shall continue to participate in any personalized aftercare
2 programs or activities as recommended by the Assessor in his Assessment report,
3 including peer support recovery groups as recommended by the PHP. Respondent shall
4 report on those activities as requested by the PHP, including executing any releases
5 necessary to allow the PHP to monitor his participation and communicate directly with
6 and obtain records from the treating providers for those aftercare activities. Respondent
7 shall be responsible for all costs of aftercare, including costs associated with compliance
8 of this Board Order.

9 6. Respondent shall promptly obtain a Primary Care Physician ("PCP") and
10 shall submit the name of the physician to the PHP in writing for approval. The approved
11 PCP shall be in charge of providing and coordinating Respondent's medical care and
12 treatment. Except in an Emergency, Respondent shall obtain medical care and treatment
13 only from the PCP and from health care providers to whom the PCP refers Respondent.
14 Respondent shall promptly provide a copy of this Interim Consent Agreement to the PCP.
15 Respondent shall also inform all other health care providers who provide medical care or
16 treatment that Respondent is participating in PHP. "Emergency" means a serious
17 accident or sudden illness that, if not treated immediately, may result in a long-term
18 medical problem or loss of life. Respondent provides full consent for the PHP to discuss
19 the case with the PCP or any other of Respondent's health care providers to ensure
20 compliance with PHP.

21 7. Respondent shall enter treatment with a PHP Contractor approved
22 psychiatrist and shall comply with any and all treatment recommendations, including
23 taking any and all prescribed medications. Respondent shall instruct the treating
24 psychiatrist to submit quarterly written reports to the PHP regarding diagnosis, prognosis,
25 current medications, recommendation for continuing care and treatment, and ability to

1 safely practice medicine. The reports shall be submitted quarterly to the PHP, the
2 commencement of which to be determined by the PHP Contractor. Respondent shall
3 provide the psychiatrist with a copy of this Board Order. Respondent shall pay the
4 expenses for treatment and be responsible for paying for the preparation of the quarterly
5 reports. At the expiration of one year or anytime thereafter, Respondent may submit a
6 written request to the PHP Contractor requesting termination of the requirement that
7 Respondent remain in treatment with a psychiatrist. The decision to terminate will be
8 based in part upon the treating psychiatrist's recommendation for continued care and
9 treatment.

10 8. All prescriptions for controlled substances shall be approved by the PHP
11 prior to being filled except in an Emergency. Controlled substances prescribed and filled
12 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
13 Medication unless the PCP or other health care provider to whom the PCP refers
14 Respondent prescribes and the PHP approves the Medication. Respondent shall not self-
15 prescribe any Medication. "Medication" means a prescription-only drug, controlled
16 substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen,
17 and plain acetaminophen.

18 9. Respondent shall submit to random biological fluid, hair and/or nail testing
19 for the remainder of this Order (as specifically directed below) to ensure compliance with
20 PHP.

21 10. Respondent shall provide the PHP in writing with one telephone number
22 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis
23 to submit to biological fluid, hair, and/or nail testing to ensure compliance with PHP. For
24 the purposes of this section, telephonic notice shall be deemed given at the time a
25 message to appear is left at the contact telephone number provided by Respondent.

1 Respondent authorizes any person or organization conducting tests on the collected
2 samples to provide testing results to the PHP. Respondent shall comply with all
3 requirements for biological fluid, hair, and/or nail collection. Respondent shall pay for all
4 costs for the testing.

5 11. Respondent shall provide the PHP with written notice of any plans to travel
6 out of state.

7 12. Respondent shall immediately notify the Board and the PHP in writing of
8 any change in office or home addresses and telephone numbers.

9 13. The relationship between the Respondent and the PHP is a direct
10 relationship. Respondent shall not use an attorney or other intermediary to communicate
11 with the PHP on participation and compliance issues.

12 14. Respondent shall be responsible for all costs, including PHP costs
13 associated with participating in PHP at the time service is rendered, or within 30 days of
14 each invoice sent to the Respondent. An initial deposit of two months PHP fees is due
15 upon entering the program. Failure to pay either the initial PHP deposit or monthly fees
16 60 days after invoicing will be reported to the Board by the PHP and may result in
17 disciplinary action up to and including license revocation.

18 15. Respondent shall immediately provide a copy of this Order to all employers,
19 hospitals and free standing surgery centers where Respondent currently has or in the
20 future gains or applies for employment or privileges. Within 30 days of the date of this
21 Order, Respondent shall provide the PHP with a signed statement of compliance with this
22 notification requirement. Respondent is further required to notify, in writing, all
23 employers, hospitals and free standing surgery centers where Respondent currently has
24 or in the future gains or applies for employment or privileges, of a chemical dependency
25 relapse.

1 16. In the event Respondent resides or practices as a physician assistant in a
2 state other than Arizona, Respondent shall participate in the rehabilitation program
3 sponsored by that state's medical licensing authority or medical society. Respondent
4 shall cause the monitoring state's program to provide written quarterly reports to the PHP
5 regarding Respondent's attendance, participation, and monitoring. The monitoring state's
6 program and Respondent shall immediately notify the PHP if Respondent is
7 noncompliant with any aspect of the Order or is required to undergo any additional
8 treatment.

9 17. The PHP shall immediately notify the Board if Respondent is non-compliant
10 with any aspect of this Board Order or is required to undergo any additional treatment.

11 18. In the event of chemical dependency relapse by Respondent or
12 Respondent's use of drugs or alcohol in violation of this Order, Respondent shall
13 promptly enter into an Interim Order for Practice Restriction and Consent to the Same
14 that requires, among other things, that Respondent not perform health care tasks until
15 such time as Respondent successfully completes long-term inpatient treatment for
16 chemical dependency designated by the PHP Contractor and obtains affirmative approval
17 from the Board or its Executive Director to return to the performance of health care tasks.
18 Prior to approving Respondent's request to return to the performance of health care
19 tasks, Respondent may be required to submit to witnessed biological fluid collection or
20 undergo any combination of physical examination, psychiatric or psychological
21 evaluation. In no respect shall the terms of this paragraph restrict the Board's authority to
22 initiate and take disciplinary action for violation of this Order.

23 19. Respondent shall obey all state, federal and local laws, all rules governing
24 the performance of health care tasks in Arizona, and remain in full compliance with any
25 court order criminal probation, payments and other orders.

1 20. The Board retains jurisdiction and may initiate a new action based upon any
2 violation of this Order.

3 21. Prior to the termination of Probation, Respondent must submit a written
4 request to the Board for release from the terms of this Order. Respondent's request must
5 be in writing and submitted at least 30 days prior to the date he would like the matter to
6 appear before the Board. In doing so, Respondent must provide the Board with evidence
7 establishing that he has successfully satisfied all of the terms and conditions of this
8 Order. Such evidence shall include a report from the PHP Contractor supporting the
9 termination of Probation. The Board has the sole discretion to determine whether all of
10 the terms and conditions of this Order have been met and whether Respondent has
11 adequately demonstrated that she has addressed all of the issues identified in it. At that
12 time, the Board shall determine whether it is appropriate to release Respondent from this
13 Order or take any other action that is consistent with its statutory and regulatory authority.

14
15 DATED AND EFFECTIVE this 24th day of February, 2022.

16
17 ARIZONA REGULATORY BOARD OF
18 PHYSICIAN ASSISTANTS

19 By Patricia E. McSorley
20 Patricia E. McSorley
21 Executive Director

22 **CONSENT TO ENTRY OF ORDER**

23 Respondent understands and agrees that:

24 1. Respondent has read and understands this Consent Agreement and the
25 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent

1 acknowledges that he/she has the right to consult with legal counsel regarding this
2 matter.

3 2. Respondent acknowledges and agrees that this Order is entered into freely
4 and voluntarily and that no promise was made or coercion used to induce such entry.

5 3. By consenting to this Order, Respondent voluntarily relinquishes any rights
6 to a hearing or judicial review in state or federal court on the matters alleged, or to
7 challenge this Order in its entirety as issued by the Board, and waives any other cause
8 of action related thereto or arising from said Order.

9 4. The Order is not effective until approved by the Board and signed by its
10 Executive Director.

11 5. All admissions made by Respondent in this Order are solely for final
12 disposition of this matter and any subsequent related administrative proceedings or civil
13 litigation involving the Board and Respondent. Therefore, said admissions by
14 Respondent are not intended or made for any other use, such as in the context of
15 another state or federal government regulatory agency proceeding, civil or criminal court
16 proceeding, in the State of Arizona or any other state or federal court.

17 6. Notwithstanding any language in this Order, this Order does not preclude
18 in any way any other State agency or officer or political subdivision of this state from
19 instituting proceedings, investigating claims, or taking legal action as may be appropriate
20 now or in the future relating to this matter or other matters concerning Respondent,
21 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent
22 acknowledges that, other than with respect to the Board, this Order makes no
23 representations, implied or otherwise, about the views or intended actions of any other
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25

1 state agency or officer or political subdivisions of the State relating to this matter or other
2 matters concerning Respondent.

3 7. Upon signing this agreement, and returning this document (or a copy
4 thereof) to the Board's Executive Director, Respondent may not revoke the consent to
5 the entry of the Order. Respondent may not make any modifications to the document.
6 Any modifications to this original document are ineffective and void unless mutually
7 approved by the parties.

8 8. This Order is a public record that will be publicly disseminated as a formal
9 disciplinary action of the Board and will be reported to the National Practitioner's Data
10 Bank and on the Board's web site as a disciplinary action.

11 9. If any part of the Order is later declared void or otherwise unenforceable,
12 the remainder of the Order in its entirety shall remain in force and effect.

13 10. If the Board does not adopt this Order, Respondent will not assert as a
14 defense that the Board's consideration of the Order constitutes bias, prejudice,
15 prejudgment or other similar defense.

16 11. Any violation of this Order constitutes unprofessional conduct and may
17 result in disciplinary action. A.R.S. § § 32-2501(18)(ee) ("Violating a formal order,
18 probation agreement or stipulation issued or entered into by the board or its executive
19 director.") and 32-2551.

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22 
23 ERIC T. FERGEN, PA-C

DATED: 1/19/2022

24
25 EXECUTED COPY of the foregoing mailed
this 24th day of February, 2022 to:

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Eric T. Fergen, PA-C
Address of Record

PHP Contractor
Address of Record

ORIGINAL of the foregoing filed
this 24th day of February 2022 with:

Arizona Regulatory Board
of Physician Assistants
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Michelle Rodes
Board staff